

Exhibit A
[Settlement Agreement]

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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-----X
EDGAR ITURBIDE, *on behalf of himself,*
FLSA Collective Plaintiffs and the Class,

Plaintiffs,

-against-

CHO FAMILIA DYNASTIA, INC. d/b/a
FLOR DE MAYO, FLOR DE MAR, INC.
d/b/a FLOR DE MAYO, MARVIN CHU,
DENNIS CHU and NELSON CHO,

Defendants.
-----X

Civil Action No.: 17-CV-0596

Netburn, M.J.

4
5 SETTLEMENT AGREEMENT AND RELEASE

6 This Settlement Agreement and Release (the "Agreement") is entered into by and
7 between Defendants CHO FAMILY DYNASTIA, INC. d/b/a Flor de Mayo, FLOR DE
8 MAR, INC. d/b/a Flor de Mayo, MARVIN CHU, DENNIS CHU and NELSON CHO
9 (collectively, "Defendants" or "Flor de Mayo"), and Plaintiff EDGAR ITURBIDE (the
10 "Plaintiff"), individually and on behalf of a putative class he represents (the "Class")
11 (Plaintiff and Defendants collectively "Parties").
12

13 1. **RECITALS AND BACKGROUND**

14 WHEREAS, on January 26, 2017, a Rule 23 Class and FLSA Collective Action
15 Complaint was filed by Plaintiff, against Defendants;
16

17 WHEREAS, Plaintiff alleged that Defendants violated the Fair Labor Standards
18 Act, 29 U.S.C. § 201, *et seq.* ("FLSA") and New York Labor Law ("NYLL") by, *inter*
19 *alia*, allegedly failing to pay minimum wages, tips, overtime, spread of hours
20 premiums, and as a result allegedly owed Plaintiff and the putative class liquidated
21 damages, penalties, and attorneys' fees and costs, (the "Litigation");
22

23 WHEREAS, on March 10, 2017 the Parties attended an Initial Conference;
24

25 WHEREAS, on March 30, 2017, the Parties sought a stay of the litigation while
26 the Parties engaged in private mediation;
27

1 WHEREAS, the Court granted the application for a stay on April 3, 2017;

2
3 WHEREAS, the Parties participated in a mediation on June 12, 2017 with
4 mediator Ruth Raisfeld who is an experienced wage and hour mediator and has helped
5 resolve dozens of class action lawsuits brought against restaurant owners in this district;

6
7 WHEREAS, the purpose of this Agreement is to settle fully and finally all
8 Released FLSA Claims and Released Rule 23 Class Claims, between Plaintiff, the Class
9 and Defendants, including but not limited to all claims asserted in the Litigation;

10
11 WHEREAS, Defendants denied and continue to deny all of the allegations made
12 by or on behalf of Plaintiff or Class Members in the Litigation, deny that they violated
13 any laws or regulations, and deny that they owe Plaintiff and the Class any payments,
14 including but not limited to any unpaid wages, unpaid overtime, unpaid spread of hours
15 payments, liquidated damages, penalties, or attorneys' fees and costs;

16
17 WHEREAS, without acknowledging, admitting, or conceding that class and
18 collective certification is warranted, without further acknowledging, admitting, or
19 conceding any liability or damages whatsoever, Defendants agreed to settle the
20 Litigation, on the terms and conditions set forth in this Agreement, to avoid the burden,
21 expense, and uncertainty of continuing the Litigation; and

22
23 WHEREAS, Plaintiff's Counsel analyzed and evaluated the merits of the claims
24 made against Defendants and the impact of this Agreement on Plaintiff and Class
25 Members of the collective and class action, including but not limited to engaging in
26 written discovery, and based upon their analysis and evaluation of a number of factors,
27 and recognizing the substantial risks of continued litigation, including but not limited to
28 the possibility that the Litigation, if not settled now, might not result in any recovery
29 whatsoever, might result in a recovery that is less favorable and that would not occur for
30 several years, or the ability to collect on a judgment, Plaintiff's Counsel is satisfied that
31 the terms and conditions of this Agreement are fair, reasonable and adequate and that this
32 Agreement is in the best interest of the Plaintiff and Class Members.

33
34 NOW THEREFORE, in consideration of the mutual covenants and promises set
35 forth in this Agreement, as well as the good and valuable consideration provided for
36 herein, the Parties hereto agree to a full and complete settlement of the Litigation on the
37 following terms and conditions:

38
39
40 **1. DEFINITIONS**

41 The defined terms set forth in this Agreement have the meanings ascribed to them
42 below.

43 **1.1 Agreement.** "Agreement" means this Settlement Agreement and Release.

- 1 **1.12 Final Effective Date.** Provided no appeal is timely filed, the “Final Effective
2 Date” means the later of thirty (30) days after (1) the Court has entered a Final
3 Approval Order approving this settlement or the Gross Settlement Fund has been
4 fully funded by Defendants as provided in Section 3.1(b) of this Agreement; (2)
5 the Court has entered the Final Approval Order as provided in Section 2.9 of this
6 Agreement; and (3) the time to appeal from the Final Approval Order has expired
7 and no notice of appeal has been filed or, if a notice of appeal is filed, the latest of
8 the following, if applicable, has occurred: (a) any appeal from the Final Approval
9 Order has been finally dismissed; (b) the Final Approval Order has been affirmed
10 on appeal in a form substantially identical to the form of the Final Approval Order
11 entered by the Court; (c) the time to petition for review with respect to any
12 appellate decision affirming the Final Approval Order has expired; and (d) if a
13 petition for review of an appellate decision is filed, the petition has been denied or
14 dismissed or, if granted, has resulted in affirmance of the Final Approval Order in
15 a form substantially identical to the form of the Final Approval Order entered by
16 the Court.
17
- 18 **1.13 Individual Settlement Allocation.** “Individual Settlement Allocation” shall
19 mean the amount payable to each Authorized Claimant pursuant to Section 3.5 of
20 this Agreement.
21
- 22 **1.14 Released Rule 23 Class Claims.** “Released Rule 23 Class Claims” means all
23 claims, rights, liens, demands, damages, penalties, fines, wages, liquidated
24 damages, restitutionary amounts, attorneys’ fees and costs, punitive damages,
25 controversies, and liabilities (including but not limited to participation to any
26 extent in any class or collective action) related to any wage and hour claims that
27 have been or could have been asserted under New York state law by or on behalf
28 of Class Members against the Released Parties, excluding Class Members who
29 opt-out of the settlement, for the period January 26, 2011 to June 12, 2017,
30 including but not limited to under the New York State Labor Law. The Parties
31 expressly acknowledge that the Released Rule 23 Class Claims are intended to
32 include and do include without limitation all such claims which Class Members,
33 excluding Class Members who opt-out of the settlement, do not know or suspect
34 to exist in their favor against the Released Parties relating to the Released Rule 23
35 Class Claims and that this Agreement expressly contemplates the extinguishment
36 of any and all such claims.
37
- 38 **1.15 Released FLSA Claims.** “Released FLSA Claims” means all claims, rights, liens,
39 demands, damages, penalties, fines, wages, liquidated damages, restitutionary
40 amounts, attorneys’ fees and costs, punitive damages, controversies, and liabilities
41 (including but not limited to participation to any extent in any class or collective
42 action) related to any wage and hour claims that have been or could have been
43 asserted under federal law by or on behalf of Authorized Claimants against the
44 Released Parties, in the Litigation for the period January 26, 2014 to June 12,
45 2017, including but not limited to under the Fair Labor Standards Act. The
46 Parties expressly acknowledge that the Released FLSA Claims are intended to

- 1 include and do include without limitation all such claims which Authorized
2 Claimants do not know or suspect to exist in their favor against the Released
3 Parties relating to the Released FLSA Claims and that this Agreement expressly
4 contemplates the extinguishment of any such claims.
5
- 6 **1.16 Released Parties.** "Released Parties" means Defendants (including Dennis Chu,
7 Marvin Chu and Nelson Cho) and any of their former and present officers,
8 directors, owners, equity holders, parents, subsidiaries, employees, insurers, co-
9 insurers, re-insurers, attorneys, accountants, general and limited partners, and/or
10 assigns, each in their capacities as such.
11
- 12 **1.17 Gross Settlement Fund.** "Gross Settlement Fund" refers to \$300,000, the
13 amount Defendants have agreed to pay to the Settlement Administrator pursuant
14 to this Agreement to fully resolve and satisfy any claim for attorneys' fees,
15 expenses and costs approved by the Court, administration fees, any and all
16 amounts to be paid to Authorized Claimants, and any Court-approved Service
17 Awards.
18
- 19 **1.18 Named Plaintiff.** "Named Plaintiff" refers to Edgar Iturbide.
- 20 **1.19 Notice or Notices.** "Notice" or "Notices" means the Court-approved Notices of
21 Proposed Settlement of Class Action and Collective Action Lawsuit including but
22 not limited to notice of an opportunity to opt-out and/or object to the proposed
23 Settlement, attached hereto as Exhibit A.
- 24 **1.20 Objector.** "Objector" means an individual who properly files an objection to this
25 Agreement, in accordance with the terms and conditions set forth herein and
26 applicable law, and does not include any individual who opts-out of this
27 Agreement.
- 28 **1.21 Opt-out Statement.** "Opt-out Statement" is a written, dated, and signed
29 statement that an individual Class Member has decided to opt-out and not be
30 included in this Agreement.
- 31 **1.22 Preliminary Approval Order.** "Preliminary Approval Order" means the Order
32 entered by the Court: (i) preliminarily approving the terms and conditions of this
33 Agreement and (ii) directing the manner and timing of providing Notices to the
34 Class Members.
- 35 **1.23 Settlement Administrator.** The "Settlement Administrator" refers to Advanced
36 Litigation Strategies, LLC, a third party administrator under common control of
37 Plaintiff's counsel, who will mail the Notices, administer the allocation, and
38 distribute the payment of legal fees and expenses and that portion of the Gross
39 Settlement Fund as determined by the number of Authorized Claimants in this
40 matter. The Settlement Administrator's fees of \$25,000 shall be paid from the
41 Gross Settlement Fund. Defendants will not contest the administration fees and
42 such amount shall be paid to Settlement Administrator even if the settlement

1 payments are not completed in full. The selection of the "Settlement
2 Administrator" is subject to court approval and, if the court declines to approve
3 Advanced Litigation Strategies, LLC, the Plaintiff's counsel shall engage another
4 Settlement Administrator that is satisfactory to the Defendants and approved by
5 the court.

6 **1.24 Settlement Checks.** "Settlement Checks" means checks issued to Class
7 Members for their share of the Gross Settlement Fund calculated in accordance
8 with this Agreement.

9 **2. INITIAL PROCEDURAL ISSUES**

10 **2.1 Binding Agreement.** This Agreement is a binding agreement and contains all
11 material agreed-upon terms.

12 **2.2 Retention of the Settlement Administrator.** Within five (5) days after the filing
13 of a Motion for Preliminary Approval, Class Counsel shall retain the Settlement
14 Administrator for an amount not to exceed \$25,000.

15 **2.3 Responsibilities of Settlement Administrator.** The Settlement Administrator
16 shall be responsible for: (i) preparing, printing and disseminating to Class
17 Members the Class Notice; (ii) promptly and simultaneously copying counsel for
18 all Parties on material correspondence and promptly and simultaneously notifying
19 all counsel for the Parties of any material requests or communications made by
20 any Party; (iii) promptly and simultaneously furnishing to counsel for the Parties
21 copies of any requests for exclusion, objections or other written or electronic
22 communications from Class Members which the Settlement Administrator
23 receives; (iv) receiving and reviewing the Opt-out Statements submitted by Class
24 Members; (v) keeping track of requests for exclusion including but not limited to
25 maintaining the original mailing envelope in which the request was mailed; (vi)
26 calculating distribution amounts to Class Members; (vii) mailing the settlement
27 checks to Authorized Claimants, (viii) providing a final report detailing the results
28 of the class mailings and participation to Defendants' counsel, and (ix)
29 effectuating any notices required by the Class Action Fairness Act.

30 **2.4 Class Notice.** The Class Notice, a copy of which is attached hereto as **Exhibit A**,
31 will inform Class Members about this Settlement and will also advise them of the
32 opportunity to object to or opt-out, and/or to appear at the Fairness Hearing.
33 Within thirty (30) days of the entry of the Preliminary Approval Order by the
34 Court, the Settlement Administrator will mail to all Class Members, via First
35 Class United States Mail, the Court-approved Notices of Proposed Settlement of
36 Class Action Lawsuit and Fairness Hearing. The Settlement Administrator will
37 take all reasonable steps to obtain the correct address of any Class Members for
38 whom a Notice is returned by the post office as undeliverable, and shall attempt a
39 re-mailing to any member of the Settlement Class for whom it obtains a more
40 recent address. The Settlement Administrator shall also mail a Class Notice to any
41 Class Member who contacts the Settlement Administrator during the time period

between the initial mailing of the Class Notice and the Bar Date and requests that their Class Notice be re-mailed. The Settlement Administrator will notify Class Counsel and Defendants' Counsel of any Notice sent to a Class Member that is returned as undeliverable after the first mailing, as well as any such Notice returned as undeliverable after any subsequent mailing(s) as set forth in this Agreement.

2.5 Preliminary Approval Motion.

(A) On or before July 31, 2017, or any date set by the Court, the Parties shall move for Preliminary Approval of this Agreement for purposes of resolving this matter according to the terms of the Agreement.

(B) The Preliminary Approval Motion also will seek the setting of a date for a Fairness Hearing for Final Approval of the settlement before the Court at the earliest practicable date following the Bar Date.

(C) If the Court denies Plaintiff's Motion for Preliminary Approval, the parties shall in good faith mutually work cooperatively to provide a supplement or amendment to the Court in due haste. If, despite good faith negotiations, the parties are unable to reach an accord on new/revised terms to the Agreement, the Parties may continue to litigate the Action as though this Agreement had never been executed. In that event, Defendants retain the right to contest whether this case should be maintained as a class or collective action, to contest the merits of the claims being asserted against them in the Litigation, and to assert their defenses. Plaintiff likewise retains the right to seek certification of a class action and shall have the opportunity to engage in further class and expert discovery in accordance with applicable law. Further, no party may use the fact that the Parties agreed to settle the case as evidence of Defendants' liability or the lack thereof. Lastly, if Preliminary Approval Motion is not approved and/or parties cannot reach new/revised terms to the Agreement, Defendants shall have no obligation to make any payments to any party, Class Member, Authorized Claimant, Class Counsel, Settlement Administrator or otherwise.

2.6 Notice to Class Members

Within ten (10) days of the filing of the Preliminary Approval Order, Defendants' Counsel will provide the Settlement Administrator the Class List in electronic form. All information provided regarding the Class Members will be treated as confidential information by Class Counsel and the Settlement Administrator. Said information will not be used by Class Counsel and the Settlement Administrator for any purpose other than to effectuate the terms of settlement.

1 **2.7 Class Member Opt-outs.**

- 2 (A) Class Members who choose to opt-out of the settlement as set forth in this
3 Agreement must mail, via First Class United States Mail, a written, signed
4 statement to the Settlement Administrator that states he or she is opting
5 out of the settlement, and include his or her name, address, and telephone
6 numbers and statement indicating his or her intention to opt-out such as: "I
7 opt out of the Flor de Mayo wage and hour settlement" ("Opt-out
8 Statement"). To be effective, an Opt-out Statement must be post-marked
9 by the Bar Date.
- 10 (B) Class Members may not opt-out of the settlement after the Bar Date.
- 11 (C) Within three (3) days of the Bar Date, Class Counsel will file with the
12 Clerk of Court, copies of any Opt-out Statements and send a final list of
13 all Opt-out Statements to Defendants' Counsel.
- 14 (D) Any Class Member who opts out of the settlement will not be considered
15 an Authorized Claimant and will not receive any Settlement Check.
- 16 (E) Any Class Member who does not submit an Opt-out Statement pursuant to
17 this Agreement will be deemed to have accepted the Settlement and the
18 terms of this Agreement, will be bound by the Settlement in this case, and
19 will have any Released Rule 23 Class Claims released with prejudice.

20 **2.8 Objections to Settlement.**

- 21 (A) Class Members who wish to present objections to the proposed settlement
22 at the Fairness Hearing must first do so in writing. To be considered, such
23 statement must be mailed to the Settlement Administrator via First-Class
24 United States Mail post-marked by the Bar Date. The statement must
25 include all reasons for the objection, and any supporting documentation.
26 The statement must also include the name, address, and telephone
27 numbers for the Class Member making the objection. The Settlement
28 Administrator will stamp the date received on the original and send copies
29 of each objection, supporting documents, as well as a copy of the Notice
30 mailed to the Objector, to Class Counsel and Defendants' Counsel by
31 email delivery no later than three (3) days after receipt of the objection.
32 The Settlement Administrator will also file the date-stamped originals of
33 any and all objections with the Court within three (3) days after the Bar
34 Date.
- 35 (B) An individual who files objections to the settlement ("Objector") also has
36 the right to appear at the Fairness Hearing either in person or through
37 counsel hired by the Objector. An Objector who wishes to appear at the
38 Fairness Hearing must state his or her intention to do so in writing on his
39 or her written objections at the time he or she submits his or her written
40 objections. An Objector may withdraw his or her objections at any time.

(C) The Parties may file with the Court written responses to any filed objections no later than three (3) days before the Fairness Hearing.

2.9 Fairness Hearing and Motion for Final Approval and Dismissal.

(A) After the Bar date, in accordance with the schedule set by the Court in the Preliminary Approval Order and in advance of the Fairness Hearing, Class Counsel shall file supporting documents for final approval of the settlement ("Final Approval"). The application for Final Approval may contain a report from the Settlement Administrator, an application for attorneys' fees, costs and expenses and supporting affidavits and documents from Class Counsel regarding the fairness, adequacy and reasonableness of the settlement or any aspect related to this Agreement. The application shall also include a proposed Final Order. Defendants' Counsel will be given seven (7) days to provide approval of the terms, form, and content of all documents filed, including the proposed Final Order, before they are filed with the Court.

(B) At the Fairness Hearing and through the Motion for Final Approval and Dismissal, the Parties will request that the Court, among other things: (1) approve the settlement and Agreement as fair, reasonable, adequate, and binding on all Class Members who have not timely opted out of the settlement; (2) order the Settlement Administrator to distribute Settlement Checks to the Class Members, including Service Award, if any, to be paid to Named Plaintiff as described in this Agreement; (3) approve the payment of attorneys' fees and costs to Class Counsel; (4) approve the payment of fees to the Settlement Administrator; (5) order the dismissal with prejudice of all Released Rule 23 Class Claims and Released FLSA Claims of all Class Members who did not opt-out, (6) order entry of Final Approval Order in accordance with this Agreement; and (7) retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby.

2.10 Mailing of Settlement Checks.

Within thirty (30) days after the Final Effective Date, the Settlement Administrator will make each distribution listed below in the following order. Each distribution will be made only at such time as the funds in the Settlement Administrator's escrow account are sufficient to cover the amount of that distribution, or as directed by Class Counsel from time to time.

(1) Paying the Settlement Administrator's total fees.

(2) Paying Class Counsel's Court-approved costs.

- 1 (3) Paying Court-approved service award.
- 2 (4) Paying Class Counsel's Court-approved attorneys' fees.
- 3 (5) Paying Authorized Claimants their Individual Settlement
- 4 Allocations. Payments to Authorized Claimants shall be automatic
- 5 and shall not require submission of any claim forms.

6 **2.11 Effect of Failure To Grant Final Approval**

7 For the purposes of this Section 2.11, the parties agree that failure to grant Final
 8 Approval shall be defined as the Court not approving the Gross Settlement Fund and/or
 9 the releases as set forth in the Agreement. In the event that any other term(s) or
 10 provision(s) of the Agreement are not approved, only such term(s) or provision(s) shall
 11 not be approved (without invalidating or rendering unapproved the remaining terms of
 12 the Agreement). In that event, the parties jointly agreed to attempt to renegotiate any
 13 unapproved term or provision.

14
 15 In the event the Court does not grant Final Approval, the Parties shall proceed as
 16 follows:

- 17 (a) The Litigation will resume unless: (1) the Parties jointly agree to seek
 18 reconsideration or appellate review of the decision denying entry of the
 19 Final Approval Order; or (2) the Parties jointly agree to attempt to
 20 renegotiate the settlement and seek Court approval of the renegotiated
 21 settlement.
 22
- 23 (b) In the event any reconsideration and/or appellate review is denied, the
 24 Parties shall have no further rights or obligations under this Agreement,
 25 and the Gross Settlement Fund shall be returned to Defendants' Counsel,
 26 based on Defendants contributions, minus the lesser of \$5,000 or
 27 administrative fees actually incurred, within five (5) days of a court order
 28 denying reconsideration and/or appellate review.
 29
- 30 (c) If the Court does not grant Final Approval, the case will proceed as if no
 31 settlement has been attempted. In that event, Defendants retain the right to
 32 contest whether this case should be maintained as a class or collective
 33 action, to contest the merits of the claims being asserted against them in
 34 the Litigation, and to assert their defenses. Plaintiff likewise retains the
 35 right to seek certification of a class action and shall have the opportunity
 36 to engage in further class and expert discovery in accordance with
 37 applicable law. Further, in the event the settlement is not approved, no
 38 party may use the fact that the Parties agreed to settle the case as evidence
 39 of Defendants' liability or the lack thereof.
 40
- 41 (d) If the Court does not grant Final Approval, Defendants shall have no
 42 obligation to make any payments to any party, Class Member, Authorized
 43

Claimant, Class Counsel or otherwise. As set forth above, the Gross Settlement Fund shall be returned to Defendants' Counsel, based on Defendants contributions, minus the lesser of \$5,000 or the administrative fees actually incurred.

- (e) The Parties shall advise the Court of the termination of the settlement, and shall apply to the Court to have a single approved notice mailed to Class Members advising them of the termination of the settlement. If approved by the Court, then the Settlement Administrator shall provide a Court-approved notice to Class Members and any Authorized Claimants that the Agreement did not receive Final Approval and that, as a result, no payments will be made to Authorized Claimants under the Agreement. Such notice shall be mailed by the Settlement Administrator via First Class United States Mail.

2.12 Effect of Substantial Exclusions

If more than 33% of the Class Members comprising the Class List choose to exclude themselves in writing from participating in the class settlement described under this Agreement, then Defendants shall have the option, to be exercised within 10 calendar days of the Bar Date, of revoking this Agreement and proceeding with the case as if no settlement has been attempted. In that event, Defendants retain the right to contest whether this case should be maintained as a class or collective action, to contest the merits of the claims being asserted by Plaintiff in the Litigation, and to assert their defenses. Plaintiff likewise retains the right to seek certification of a class action and shall have the opportunity to engage in further class and expert discovery in accordance with applicable law.

2.13 Effect of Non Payment

If the Gross Settlement Fund is not timely funded by Defendants, then Plaintiff shall provide notice of failure to pay to Defendants' counsel and Defendants shall have 10 days to cure after such notice is provided, which may be made electronically. Thereafter, Plaintiff can elect to continue with the lawsuit as if no settlement was reached, and Defendants agree that the claims of all Class Members under the FLSA and NYLL are tolled to June 12, 2017. The parties agree that the Court will retain jurisdiction to enforcement this Agreement. Class Counsel retains all right under law and equity to seek enforcement of the Agreement.

3. SETTLEMENT TERMS

3.1 Settlement Amount.

- (A) Defendants agree to create a "Gross Settlement Fund" in the amount of \$300,000, which shall fully resolve and satisfy any claims for (i) attorneys' fees, expenses and costs approved by the Court, (ii) fees to the

- 1 Settlement Administrator and (iii) all amounts to be paid to all Authorized
2 Claimants for releasing claims as set forth herein, and any Court-approved
3 Service Awards.
- 4 (B) Defendants shall fund the Gross Settlement Fund into the escrow account
5 of the Settlement Administrator as follows: \$60,000 of the Settlement
6 Amount shall be funded no later than August 15, 2017. Thereafter,
7 starting from August 31, 2017, Defendants shall pay 9 equal monthly
8 installments of \$26,667.00 each, on or prior to last day of every month
9 until the full balance of the Settlement Amount has been paid as follows:
- 10 • August 31, 2017 - \$26,667.00
 - 11 • September 30, 2017 - \$26,667.00
 - 12 • October 31, 2017 - \$26,667.00
 - 13 • November 30, 2017 - \$26,667.00
 - 14 • December 31, 2017 - \$26,667.00
 - 15 • January 31, 2018 - \$26,667.00
 - 16 • February 28, 2018 - \$26,667.00
 - 17 • March 31, 2018 - \$26,667.00
 - 18 • April 30, 2018 - \$26,667.00
- 19 To the extent that Defendants fail to timely fund any of the installment
20 payments, or any check fails to clear, a late penalty of 5% on the
21 outstanding balance, compounded monthly, shall be assessed.
- 22 (C) The Settlement Administrator shall return to Defendants all funds in the
23 escrow account in the event that: (a) the Court fails to grant preliminary
24 approval of the Agreement, (b) the Court fails to grant Final Approval of
25 the settlement, or (c) more than 33% of the Class Members opt out of this
26 settlement pursuant to Section 2.12 of this Agreement.
- 27 (D) Class Members will have one hundred twenty (120) days from the date of
28 mailing to endorse and cash their Settlement Checks (the "Acceptance
29 Period"). Class Members will be informed of the Acceptance Period in
30 the Notices and on the Settlement Checks.
- 31 (E) One hundred fifty (150) days after the initial distribution of Settlement
32 Checks is made, any uncashed Settlement Checks to Rule 23 Class
33 Members or Service Award checks outstanding shall be redistributed in a
34 second mailing to those Class Members who endorsed and deposited their

Settlement Checks in the initial distribution, on a pro rata basis, at Plaintiff's counsel's election depending on the amount of the residual amounts remaining and practicability. For purposes of this provision, the mailing date shall be deemed to be the date posted on the settlement checks. If the amount remaining is small enough that redistribution is not practical, or there are any additional unclaimed funds, such funds will be and applied first, to any unforeseen costs, fees and expenses related to the class settlement, including payments to previously undesignated class members, and thereafter, to a *cy pres* charitable donation to St. Jude Children's Research Hospital.

(F) Any uncashed Settlement Checks or Service Awards and all amounts remaining in the Gross Settlement Fund one hundred twenty (120) days after the last mailing of Settlement Checks, after payment of any unforeseen expenses, costs, fees, or liability for the class settlement, shall be applied as a *cy pres* donation as determined by Plaintiff's Counsel and Defendants' Counsel. For purposes of this provision, the mailing date shall be deemed to be the date posted on the settlement checks.

(G) At the Settlement Administrator's election, distributions to Class Members may be effected from time to time in more than one mailing due to the installment payment plan described above; provided however that no *cy pres* payment may be made until the end of the check cashing period on the last mailing, as determined by the Settlement Administrator.

3.2 Settlement Amounts Payable as Attorneys' Fees, Expenses and Costs.

(A) At the Fairness Hearing and Motion for Final Approval, Class Counsel will petition the Court for an award of attorneys' fees of 1/3 of the Gross Settlement Amount (\$100,000) plus additional costs and expenses to be paid out of the Gross Settlement Fund. Defendants will not oppose this application, including any appeal or request for reconsideration if the application is denied or modified by the Court. After payment of the approved attorneys' fees award and costs, Defendants shall have no additional liability for Class Counsel's attorneys' fees, expenses and costs.

(B) The substance of Class Counsel's application for attorneys' fees, expenses and costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of any proceeding related to Class Counsel's application for attorneys' fees, expenses and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval.

(C) Any reduction in attorneys' fees and expenses shall automatically be applied to the Net Settlement Amount to be distributed to Class Members.

1 **3.3 Service Award**

2 (A) In return for services rendered to the Class Members, at the Fairness
3 Hearing, Named Plaintiff Edgar Iturbide will apply to the Court to receive
4 \$10,000 as a Service Award. Defendants will not oppose this application,
5 including any appeal or request for reconsideration if the application is
6 denied or modified by the Court.

7 (B) The application for Service Award is to be considered separately from the
8 Court's consideration of the fairness, reasonableness, adequacy, and good
9 faith of the settlement of the Litigation. The outcome of the Court's ruling
10 on the application for Service Award will not terminate this Agreement or
11 otherwise affect the Court's ruling on the Motion for Final Approval.

12 (C) Any reduction in Service Award shall automatically be applied to the Net
13 Settlement Amount to be distributed to Class Members.

14 **3.4 Administration Fees**

15 (A) In return for services rendered to the Class Members, the Settlement
16 Administrator will apply to the Court for administration fees of \$25,000.
17 Defendants will not oppose this application, including any appeal or
18 request for reconsideration if the application is denied or modified by the
19 Court.

20 (B) The application for administration fees is to be considered separately from
21 the Court's consideration of the fairness, reasonableness, adequacy, and
22 good faith of the settlement of the Litigation. The outcome of the Court's
23 ruling on the application for administration fees will not terminate this
24 Agreement or otherwise affect the Court's ruling on the Motion for Final
25 Approval.

26 (C) Any reduction in administration fees shall automatically be applied to the
27 Net Settlement Amount to be distributed to Class Members.

28 **3.5 Net Settlement Fund and Allocation to Class Members.**

29 (A) After deduction of all court-approved service awards, fees, expenses and
30 costs from the Gross Settlement Fund (the "Net Settlement Amount"),
31 Individual Settlement Allocations will be computed based on the number
32 of workweeks worked by such Class Members during the Class Period.
33 The Settlement Allocations shall be made in accordance with the dates of
34 employment set forth in the confidential document provided by
35 Defendants' Counsel. Amounts otherwise allocated to claimants who
36 opted-out shall be applied to the Net Settlement Amount to be distributed
37 to Class Members.
38

1 (B) The employer's portion, if any, of employment taxes shall be borne by
 2 Defendants and not from the Gross Settlement Fund. 75% of the
 3 settlement payments to Class Members as identified in paragraph 3.5(A)
 4 from Defendants will be considered 1099 non-wage income. 25% will be
 5 deemed wage earnings subject to withholdings on W-2. The Service
 6 Award will be considered 1099 non-wage income. A 1099 shall be issued
 7 to Plaintiff's counsel for tax reporting purposes. Under the Internal
 8 Revenue Code of 1986 (the "Code"), no information reporting (IRS Form
 9 1099) is required for payments to Class Members who receive less than
 10 \$600 in gross income not considered wages.
 11

12 (C) All applicable employment taxes will be paid by Defendants and remitted
 13 by the Settlement Administrator. Defendants will provide the Settlement
 14 Administrator such information as is necessary for the Settlement
 15 Administrator to make proper employee tax withholdings, issue and file
 16 tax-related forms, and comply with all tax reporting obligations.
 17

18 (D) The Settlement Administrator shall calculate the appropriate and regular
 19 tax deductions, if any, from each Authorized Claimant's Individual
 20 Settlement Allocation Amount (as calculated by Section 3.5(A)) to
 21 determine the Individual Net Amount. The Individual Net Amount will be
 22 the amount reflected on the Settlement Checks.
 23

24
 25 4. RELEASE

26 4.1 Release of Claims.

27 (A) By operation of the entry of the Final Approval Order, and except as to
 28 such rights or claims as may be created by this Agreement each individual
 29 Class Member who does not timely opt-out pursuant to this Agreement
 30 forever and fully releases Released Parties from Released Rule 23 Class
 31 Claims.

32 (B) By operation of the entry of the Final Approval Order, and except as to
 33 such rights or claims as may be created by this Agreement, each individual
 34 Authorized Claimant who endorses and deposits their Settlement Check
 35 forever and fully releases Released Parties from all Released FLA
 36 Claims. The back of each check shall bear the following legend:

37 "By my endorsement of this check, I opt into the lawsuit S.D.N.Y. 17-cv-
 38 0596, for settlement purposes only, and release all of my claims as
 39 described in the class settlement agreement."

- 1 (C) Except as provided in this Agreement, upon payment of the Attorneys'
 2 fees, expenses, and costs approved by the Court, Class Counsel and
 3 Plaintiff, on behalf of the Class Members and each individual Class
 4 Member, hereby irrevocably and unconditionally releases, acquits, and
 5 forever discharges any claim that the Class Member may have against
 6 Released Parties for attorneys' fees or costs associated with Class
 7 Counsel's representation of the Class Members. Class Counsel further
 8 understands and agrees that any fee payments approved by the Court will
 9 be the full, final and complete payment of all attorneys' fees, expenses and
 10 costs associated with Class Counsel's representation in the Litigation.
- 11 (D) Subject to applicable law, the Parties agree that it is their intent that the
 12 resolution set forth in this Agreement will release any further attempt, by
 13 lawsuit, administrative claim or action, arbitration, demand, or other
 14 action of any kind by each and all Authorized Claimants including but not
 15 limited to participation to any extent in any class or collective action, to
 16 obtain a recovery against the Released Parties based on each and all
 17 Released FLSA Claims and Released Rule 23 Class Claims, including but
 18 not limited to the allegations in the Litigation.
- 19 (E) Except as provided in this Agreement and subject to applicable law,
 20 Authorized Claimants agree that, with respect to the Released FLSA
 21 Claims and Released Rule 23 Class Claims, they will not affirmatively
 22 join, opt in to, or participate as a party plaintiff in any claim under the
 23 FLSA or state or local wage and hour law against the Released Parties,
 24 and that they will elect to opt out of any action under the FLSA or state or
 25 local wage and hour law against the Released Parties of which they are
 26 involuntarily made members or participants either at the time they receive
 27 notice of the right to opt out or such time as this Covenant Not to Sue is
 28 brought to their attention. Moreover, Authorized Claimants agree that
 29 they may not reinstate the Litigation.

30

31 4.2 Denial of Liability

32 Defendants have agreed to the terms of this Agreement without in any way
 33 acknowledging any fault or liability, and with the understanding that terms have
 34 been reached because this settlement will avoid the further expense and disruption
 35 of Defendants' business due to the pendency and expense of litigation. Nothing in
 36 this Agreement shall be deemed or used as an admission of liability by
 37 Defendants, nor as an admission that a class or collective action class should be
 38 certified for any purpose other than settlement purposes.

1 **5. INTERPRETATION AND ENFORCEMENT**

- 2 **5.1 Cooperation Between the Parties; Further Acts.** The Parties shall reasonably
3 cooperate with each other and shall use their reasonable best efforts to obtain the
4 Court's approval of this Agreement and all of its terms. Each party, upon the
5 request of any other party, agrees to perform such further acts and to execute and
6 deliver such other documents as are reasonably necessary to carry out the
7 provisions of this Agreement.
- 8 **5.2 Confidentiality.** The Parties and Plaintiff's Counsel agree to maintain the
9 confidentiality of any documents or information produced, formally or informally,
10 during the course of the Litigation (including but not limited to the Class List), as
11 well as of their negotiations leading to this Agreement, consistent with F.R.E.
12 Rule 408 (except to the extent necessary for the parties to inform the Court of
13 settlement negotiations for the purpose of seeking preliminary or final approval of
14 settlement). The Settlement Administrator agrees to use the Class List solely for
15 the purposes of administering the settlement and will destroy all hard copies and
16 electronic copies of the Class List once it has completed its duties under this
17 Agreement.
- 18 **5.3 No Assignment.** Class Counsel and Named Plaintiff, on behalf of the individual
19 Class Members, represent and warrant that they have not assigned or transferred,
20 or purported to assign or transfer, to any person or entity, any claim or any portion
21 thereof or interest therein, including, but not limited to, any interest in the
22 Litigation, or any related action.
- 23 **5.4 Entire Agreement.** This Agreement constitutes the entire agreement between the
24 Parties with regard to the subject matter contained herein, and all prior and
25 contemporaneous negotiations and understandings between the Parties shall be
26 deemed merged into this Agreement.
- 27 **5.5 Binding Effect.** This Agreement shall be binding upon the Parties and, with
28 respect to Named Plaintiff and all Class Members, their spouses, children,
29 representatives, heirs, administrators, executors, beneficiaries, conservators,
30 attorneys and assigns.
- 31 **5.6 Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated
32 all the terms and conditions of this Agreement at arms' length. All terms and
33 conditions of this Agreement in the exact form set forth in this Agreement are
34 material to this Agreement and have been relied upon by the Parties in entering
35 into this Agreement, unless otherwise expressly stated.
- 36 **5.7 Captions.** The captions or headings of the Sections and paragraphs of this
37 Agreement have been inserted for convenience of reference only and shall have
38 no effect upon the construction or interpretation of any part of this Agreement.
- 39 **5.8 Construction.** The determination of the terms and conditions of this Agreement
40 has been by mutual agreement of the Parties. Each Party participated jointly in

- 1 the drafting of this Agreement, and therefore the terms and conditions of this
 2 Agreement are not intended to be, and shall not be, construed against any Party by
 3 virtue of draftsmanship.
- 4 **5.9 Severability.** If any provision of this Agreement is held by a court of competent
 5 jurisdiction to be void, voidable, unlawful or unenforceable, the remaining
 6 portions of this Agreement will remain in full force and effect.
- 7 **5.10 Governing Law.** This Agreement shall in all respects be interpreted, enforced
 8 and governed by and under the laws of the State of New York, without regard to
 9 choice of law principles, except to the extent that the law of the United States
 10 governs any matter set forth herein, in which case such federal law shall govern.
- 11 **5.11 Continuing Jurisdiction.** The Parties agree to the continuing jurisdiction of the
 12 Court and shall request the Court to retain jurisdiction over the interpretation and
 13 implementation of this Agreement as well as any and all matters arising out of, or
 14 related to, the interpretation or implementation of this Agreement and of the
 15 settlement contemplated thereby.
- 16 **5.12 No Publicity.** Except as required by law with respect to the identity of the
 17 Litigation or in connection with court filings that Class Counsel believes are
 18 necessary to obtain approval of this Agreement, Class Counsel shall not publicize
 19 or discuss with third parties the Litigation or any terms of this Agreement. The
 20 Plaintiff and Class Counsel agree that they will not contact any representative of
 21 the media or press, and if contacted by any representative of the media or press
 22 will only state that the matter has been satisfactorily resolved on mutually
 23 agreeable terms. Class Counsel further agrees that they will not post any
 24 information concerning this Agreement on any website or any other forum of
 25 advertisement.
- 26 **5.13 Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the
 27 terms of this Agreement, whether purportedly made before or after the Court's
 28 approval of this Agreement, shall be valid or binding unless in writing, signed by
 29 or on behalf of all Parties and then only to the extent set forth in such written
 30 waiver, modification or amendment, subject to any required Court approval. Any
 31 failure by any party to insist upon the strict performance by the other party of any
 32 of the provisions of this Agreement shall not be deemed a waiver of future
 33 performance of the same provisions or of any of the other provisions of this
 34 Agreement, and such party, notwithstanding such failure, shall have the right
 35 thereafter to insist upon the specific performance of any and all of the provisions
 36 of this Agreement.
- 37 **5.14 When Agreement Becomes Effective; Counterparts.** This Agreement shall
 38 become effective upon its full execution and approval by the Court. The Parties
 39 may execute this Agreement in counterparts, and execution in counterparts shall
 40 have the same force and effect as if all Parties had signed the same instrument.

1 **5.15 Binding Authority of Counsel.** Counsel hereby represent that they are fully
2 authorized to bind the parties they represent to the terms and conditions hereof
3 and that they have retainer agreements and/or authorizations to execute this
4 Agreement on their behalf.

5 **5.16 Signatures.** This Agreement is valid and binding if signed by the Parties'
6 authorized representatives.

7 **5.17 Facsimile and Email Signatures.** Any party may execute this Agreement by
8 causing its counsel to sign on the designated signature block below and
9 transmitting that signature page via facsimile or email to counsel for the other
10 party. Any signature made and transmitted by facsimile or email for the purpose
11 of executing this Agreement shall be deemed an original signature for purposes of
12 this Agreement and shall be binding upon the party whose counsel transmits the
13 signature page by facsimile or email.

14 **5.17 CAFA Notice.** The Claims Administrator, working jointly with Defendants, shall
15 timely provide notices not later than 10 days after preliminary approval of the
16 class settlement is obtained, as required by the Class Action Fairness Act
17 ("CAFA") and provide copies of such notices to Class Counsel simultaneous with
18 providing such notice.

19

20

21

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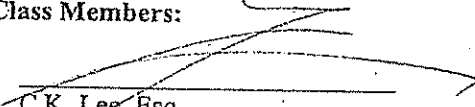
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1 WE AGREE TO THESE TERMS,

2 Counsel to the Named Plaintiff,
3 FLSA Collective Plaintiffs,
4 and Class Members:

5
6 By: 
7 C.K. Lee, Esq.
8 Lee Litigation Group, PLLC
9 30 East 39th Street, Second Floor
10 New York, New York 10016
11

12 Defendants

13
14 CHO FAMILIA DYNASTIA, INC. d/b/a Flor de Mayo
15

16 By: _____
17

18 Dated: _____
19

20 FLOR DE MAR, INC. d/b/a Flor de Mayo
21

22 By: _____
23

24 Dated: _____
25

26 MARVIN CHU
27

28 By: _____
29

30 Dated: _____
31

32 DENNIS CHU
33

34 By: _____
35

36 Dated: _____
37

38 NELSON CHO
39

40 By: _____
41

42 Dated: _____
43
44
45
46


1 WE AGREE TO THESE TERMS,

2 Counsel to the Named Plaintiff,
3 FLSA Collective Plaintiffs
4 and Class Members:
5


6 By: _____
7 C.K. Lee, Esq.
8 Lee Litigation Group, PLLC
9 30 East 39th Street, Second Floor
10 New York, New York 10016
11


12 Defendants


13
14 CHO FAMILIA DYNASTIA, INC. d/b/a Flor de Mayo
15

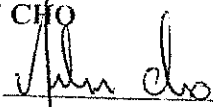
16 By: 
17
18 Dated: 08/01/2017
19

20 FLOR DE MAR, INC. d/b/a Flor de Mayo
21

22 By: 
23
24 Dated: 08/01/2017
25

26 MARVIN CHU
27
28 By: 
29
30 Dated: 08/01/2017
31

32 DENNIS CHU
33
34 By: 
35
36 Dated: 08/01/2017
37

38 NELSON CHO
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40 By: 
41
42 Dated: 08/01/2017
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EXHIBIT A

[Form of Notice]

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

EDGAR ITURBIDE,
on behalf of himself,
FLSA Collective Plaintiffs and the Class,

Plaintiff,

Case No.: CV-17-cv-0596

**NOTICE OF PROPOSED
CLASS ACTION SETTLEMENT**

v.

CHO FAMILIA DYNASTIA, INC. d/b/a
FLOR DE MAYO, FLOR DE MAR, INC.
d/b/a FLOR DE MAYO, MARVIN CHU,
DENNIS CHU and NELSON CHO,

Defendants.

**If you were employed by CHO FAMILY DYNASTIA, INC. or FLOR DE MAR, INC.
(including the individually named defendants "Defendants") as an hourly, non-exempt
employee, from January 26, 2011 to June 12, 2017, please read this Notice.**

DATED: [_____, 2017]

PLEASE READ THIS NOTICE CAREFULLY

This Notice relates to a proposed settlement of a class and collective action litigation. It has been authorized by a federal court. It contains important information as to your right to participate in the settlement, make a claim for payment or elect not to be included in the class.

Introduction

A former employee of Defendants, Edgar Iturbide, filed a lawsuit for allegedly unpaid wages and overtime premiums, and other claimed damages against Defendants. The Court in charge of this case is the United States District Court for the Southern District of New York. The lawsuit is known as *Iturbide v. Cho Family Dynastia, Inc., et al.* The person who filed the lawsuit is called the Plaintiff. Plaintiff alleges in the lawsuit that, among other things, Defendants failed to pay

him and other employees the proper minimum wage and overtime in violation of the Fair Labor Standards Act ("FLSA") and New York State Labor Law ("NYLL"). Defendants deny the Plaintiff's allegations. It is Defendants' position that they properly compensated Plaintiff and other employees.

Although Defendants deny that they are liable or owe damages to anyone, Defendants have concluded that it is in their best interests to resolve Plaintiff's claims on behalf of Plaintiff and other employees. Accordingly, Plaintiff and Defendants have agreed to settle the action. Defendants have agreed to pay \$300,000 to cover the claims of all of the employees in this case as well as expenses such as attorneys' fees. The Court has not decided who is right and who is wrong. Your legal rights may be affected, and you have a choice to make now. These rights and options are summarized below and fully explained in this Notice.

Based on the Settlement Administrator's calculation, a Class Member will receive approximately \$[] for each week worked during the relevant statutory period. If you would like to know how many weeks you were employed based on Defendants' records, or the amount estimated to be payable to you under the class settlement, please contact the Administrator.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING If you choose to participate in the settlement, you do not have to do anything. Once the settlement is approved by the Court, you will automatically receive your allocated settlement amount.

EXCLUDE YOURSELF If you wish to exclude yourself ("opt-out") from the lawsuit you must follow the directions outlined in response to question 7 below.

OBJECT If you wish to object to the settlement, you may write to the Court about why you believe the settlement is unfair or unreasonable. If the Court rejects your objection, you will still be bound by the terms of the settlement for claims under New York Law unless you submit a valid and timely opt-out form. You will not be bound by the settlement if you opt-out of this action as described herein. If you object you may appear at the Fairness Hearing to speak to the Court about the fairness of the settlement.

1. Why did I receive this notice?

You have received this notice because Defendants' records show that you worked at their restaurants at sometime between from **January 26, 2011 to June 12, 2017**.

2. What is a class action?

A class action is a lawsuit where one or more persons sue not only for themselves, but also for other people who have similar claims. These other people are known as Class Members. In a class action, one court resolves the issues for all Class Members, except for those who exclude themselves from the Class. The Honorable Sarah Netburn, United States Magistrate Judge of the United States District Court for the Southern District of New York is presiding over this class action. Judge Netburn has not made any determination about who is right or wrong in this lawsuit.

3. Why is there a settlement?

Class Counsel analyzed and evaluated the claims made against Defendants in the Litigation, investigated Defendants' pertinent payroll policies, analyzed payroll data for Plaintiff and a sample of the potential Class Members and evaluated Defendants' ability to pay a judgment. Based upon Class Counsel's analysis and evaluation of this data, relevant law, and the substantial risks of continued litigation, including the possibility that the litigation, if not settled now, might not result in any recovery whatsoever, or might result in a recovery that is less favorable and that would not occur for several years, Class Counsel entered into this proposed settlement. Class Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable and adequate and that this Agreement is in the best interest of the Named Plaintiff and the Class Members. Your estimated portion of the settlement will be based on the number of weeks you worked during the class period, after all attorneys' fees, costs, service payment and administrative charges have been paid. If you would like to know how many weeks you were employed based on Defendants' records, or the amount estimated to be payable to you under the class settlement, please contact the Administrator.

4. Payment to Class

If you do nothing, you will automatically be deemed to be part of the class settlement. You will be paid a proportionate share of the Settlement Fund based on a formula taking into account weeks you worked for Defendants during the period January 26, 2011 to June 12, 2017. Based on the Settlement Administrator's calculation, a Class member will receive approximately \$[] for each week worked during the relevant statutory period. If you would like information about the amount of your individual settlement payment, please contact Settlement Administrator, Advanced Litigation Strategies, LLC, 30 East 39th Street, Second Floor, New York, New York, 10016, 212-661-0051.

Any unclaimed funds shall first be allocated to those Class Members who cashed their checks, depending on the residual amounts remaining and practicability, on a pro rata basis. All further remaining unclaimed amounts, if any, shall be applied to *cy pres* charitable donations as determined by Plaintiff's counsel and Defendants.

5. Payment to Class Representative

The Settlement proposes that named Plaintiff Edgar Iturbide, who took a lead role in this litigation and assisted in its resolution will receive a service payment of \$20,000, as

compensation for taking a leading role in this litigation, for his significant involvement and time in discovery for the benefit of the Class Members.

6. Procedures

If you do nothing, you will automatically participate in the class settlement. If you want to exclude yourself, please refer to Paragraph 7 hereto.

If the Court grants final approval of the Settlement, this action will end, and Class Members who do not opt out will release Defendants through June 12, 2017 from all claims asserted in the Complaint as described below. This means that you cannot sue, continue to sue, or be party to any other lawsuit against Defendants regarding the claims brought in this case, although you may still retain certain Federal claims. It also means that all of the Court's orders will apply to you and legally bind you.

The Release in the Settlement Agreement provides that:

- (i) **With respect to claims under New York State law, you are releasing all of your wage and hour claims that could have been asserted, for the period January 26, 2011 to June 12, 2017 and**
- (ii) **With respect to claims under federal law, you are releasing all of your wage and hour claims that could have been asserted, for the period January 26, 2014 to June 12, 2017.**

By failing to opt-out of this lawsuit, you will automatically be part of the class settlement for the New York State law claims. By endorsing and depositing a settlement check, you will automatically be part of the collective class settlement for the federal law claims.

7. How Do I Exclude Myself From The Settlement?

If you do not want to participate in the class settlement, you must take steps to exclude yourself from this case.

If you want to exclude yourself, you must mail a written, signed statement to the Settlement Administrator stating "I opt out of the Flor de Mayo wage and hour settlement" and include your name, address, and telephone number ("Opt-out Statement"). To be effective, the Opt-out Statement must be mailed to the Settlement Administrator via First Class United States Mail, postage prepaid, and postmarked by [_____], 2017.

Settlement Administrator
Advanced Litigation Strategies, LLC
30 East 39th Street, Second Floor
New York, New York 10016
info@leelitigaton.com

If you exclude yourself from the Lawsuit and Settlement, you will NOT be allowed to object to the settlement as described in paragraph 12 below.

8. If I don't exclude myself from the settlement, can I sue Defendants for the same thing later?

No. By participating in the settlement, you give up any rights to sue Defendants under federal and state law with regard to the claims brought in this case or which could have been brought in this case. If you have a pending lawsuit, speak to your lawyer in that case immediately to see if this settlement will affect your other case. Remember, the exclusion deadline is [____], 2017.

9. If I exclude myself, can I get money from this settlement?

No. If you exclude yourself, you will not receive any money from this lawsuit. But, you may sue, continue to sue, or be part of a different lawsuit against Defendants regarding these same claims.

10. Do I have a lawyer in this case?

The law firm of Lee Litigation Group, PLLC, 30 East 39th Street, Second floor, New York, New York 10016, has been designated as legal counsel to represent you and the other Class Members. These lawyers are called Class Counsel. You will not be charged separately for these lawyers. Their fees are being paid from the total settlement fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the service providers be paid?

Class Counsel will ask the Court to approve payment of up to \$100,000 (1/3 of the settlement fund established by Defendants) to them for attorneys' fees, plus additional costs and expenses to be determined. The fees would pay Class Counsel for all work that they have performed in this action including filing briefs, engaging in discovery, investigating the facts, attending court conferences and negotiating and overseeing the settlement.

The Court has approved payment of \$25,000 as fees to Advanced Litigation Strategies, LLC to administer the settlement.

12. How do I tell the Court that I don't like the settlement?

You can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. If the Court rejects your objection, you will still be bound by the terms of the settlement of your claims under New York Law unless you have submitted a valid and timely request for exclusion. To object, you must send a letter saying that you object to the settlement in *Iturbide v. Cho Family Dynasty*, et

al. Your statement must include all reasons for the objection and any supporting documentation in your possession. Your statement must also include your name, address, and telephone number.

If you wish to present your objection at the fairness hearing described below, you must state your intention to do so in your written objection. Your statement should be as detailed as possible otherwise the court may not allow you to present reasons for your objection at the fairness hearing that you did not describe in your written objection. Mail the objection to the Settlement Administrator via First-Class United States Mail to the address below. Your objection will not be heard unless it is mailed to the Settlement Administrator via First Class United States Mail and post-marked by [_____], 2017.

Settlement Administrator
Advanced Litigation Strategies, LLC
30 East 39th Street, Second Floor
New York, New York 10016

The Settlement Administrator will share your objection with Class Counsel and Defendants' counsel and your objection statement will be filed with the Court.

You may not object to the settlement if you submit a letter requesting to exclude yourself or "opt-out" of the settlement of the lawsuit.

13. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself from the settlement ("opting-out") is telling the Court that you don't want to be part of the Class. If you exclude yourself, you are not allowed to object because the case no longer affects you.

The Court will hold a hearing to decide whether to approve the settlement. Class Counsel will answer questions the Judge may have. You do not have to come to the hearing, but you are welcome to do so at your own expense.

If you send an objection, it is not necessary for you to come to Court to talk about it, but you may do so at your own expense or pay your own lawyer to attend. As long as you mailed your written objection on time, the Court will consider it. If you do attend the hearing, it is possible that you will not be permitted to speak unless you timely object in writing as described above and notify the Court of your intention to appear at the fairness hearing.

14. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at [_____] a.m./p.m. on [_____] 2017, in Courtroom 219 at the United States District Court for the Southern District of New York, 40 Foley Square, New York, New York.

At this hearing the Court will consider whether the terms of the settlement are fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

15. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can review the settlement agreement by asking for a copy of the Settlement Agreement by writing or calling the Settlement Administrator.